ib., Lib. XLVII, tit. x, fr. 15. §13. In England for many centuries, defamation or "diffamation" was cognizable only in the ecclesiastical courts, Townshend on Slander, §§ 10–12, a forum wherein the defendant was punished solely "pro salute animæ" *Palmer and Thorpe*, 4 Co. Rep. 20. Unless, therefore, he was guilty of moral wrong, viz., malice, he had committed no offense in the eyes of the spiritual law. Ayliffe's Parergon, p. 212. Even after the invention of the printing press had forced the Star Chamber to take over jurisdiction of actions of libel, the principles of the Roman law remained in force, 3 COL. LAW REV. 563, and unless the plaintiff could prove that the defendant had been actuated by malevolent motives, he could not recover. See *Crawford* v. *Middleton* (1678) 1 Lev. 82. But in either case it was apparent the plaintiff's reputation had been damaged. The courts were confronted on the one hand with a constantly increasing number of cases of *damnum absque injuria;* on the other hand they were hampered by the traditional necessity of a moral transgression. The fiction of implied malice represents a compromise between the spiritual and the practical. 4 COL. LAW REV. 35 et seq.

Modern legal thought has advanced to the point of regarding implied malice as meaning mere absence of legal excuse, Pollock on Torts (6th. Ed.) 244, but where the occasion is conditionally privileged, the plaintiff, it is said, may still prove actual malice. *Bacon* v. *Michigan Central R. Co.* (1887) 66 Mich. 166. On the other hand if the publication be absolutely privileged the defendant's motives may not be investigated. *Scott* v. *Stansfield* (1868) L. R. 3 Ex. 220; Burdick's Law of Torts 322. An inconsistency which may only be explained on grounds of public policy. Holmes' Common Law, p. 139.

Assuming, in the principal case, that the defendant had exceeded its privilege, by extending the publication in question to others than those directly interested (however, see Odgers on Libel, 3rd Ed., 271 and cases cited), still, the court is confusing the issue when it suggests, under the circumstances, that the bona fides of the defendant is pertinent. If the privilege is exceeded, no amount of good faith on the defendant's part should prevent the plaintiff's recovery. *Hebditch* v. *MacIlwaine* [1894] 63 L. J. R. Q. B. 587. So on principle the better view would seem to be that the excess of privilege should not have aided the plaintiff as evidence of malice on the defendant's part, b i because it was a publication to parties in respect of whom no privilege ever existed. *Williamson* v. *Freer* (1874) L. R. 9 C. P. 393; Pollock on Torts (6th Ed.) p. 268.

FORCIBLE ENTRY OF HOUSES BY OFFICER WITHOUT WARRANT.—The extent to which the law will permit the breaking into of houses by police officers without a warrant has always been closely restricted. So far as execution of civil process was concerned a man's dwelling was literally his castle and no one might enter against his will. The immunity thus conferred however was restricted to the members of the household and permanent lodgers and did not extend to strangers and visitors within the house. Foster's Crown Laws 320; *Oystead* v. *Shed* (1816) 13 Mass. 520. In criminal process the inviolacy of the dwelling was forced to give way before those in possession of the "King's

Keys" under certain well defined conditions. An officer without a warrant or even a private person was justified in breaking down doors while in pursuit of one known to have committed a treason or a felony or to have given a dangerous wound. And so an officer might enter in case of felony or where an affray or breach of the peace is made in the view or hearing of an officer or where one, arrested for any cause, afterward escapes and takes refuge in a house. 2 Hawkins P. C. c. 14; 2 Hale P. C. 92.

With these exceptions the general rule was that no one might break in doors without a warrant issued by a justice of the peace upon probable cause and supported by oath. 2 Burns Justice 348; 2 Hale P. C. 88–96; *McLennon* v. *Richardson* (Mass. 1860) 15 Gray 74. The power of an officer armed with a proper warrant was in turn limited by establishing certain prerequisites that had to be observed before a forcible entry could be made, viz.,—demand of entrance and refusal, *Semayne's Case* (1604) 5 Co. Rep. 91; but see *Hawkins* v. *Commonwealth* (Ky. 1854) 14 B. Monroe 395; disclosure of the contents of the warrant, 2 Hale P. C. 116; *Drennon* v. *People* (1882) 10 Mich. 169; some proof of the officer being such, *State* v. *Green* (1877) 66 Mo. 631; and in the case of an unknown officer, production of the warrant. 2 Hawkins P. C. c. 13 §28; *State* v. *Curtis* (N. C. 1789) 11 Haywood 471. Where the object of the entry was to effect the arrest of one under probable suspicion merely or to search for stolen goods or for evidences of crime there was no authority for an officer's breaking without a warrant. Nor in this respect would a general warrant to search for felons or for stolen goods afford any protection to the officer. 2 Hale P. C. 114; Chitty Crim. Law 23, 55–7. Although general search warrants were employed in England for a time, they were very generally discredited and received their death blow by act of Parliament after the decision of *Money* v. *Leach* (1765) 11 State Trials 307, 321. 1 Chitty Crim. Law 66; 2 Burns Justice 348. In this country they are prohibited by the fourth amendment to the federal constitution and by special provisions in many of the state constitutions.

In a recent case in New York where an injunction was asked against the police commissioner, it was sought to justify the breaking into and wrecking of a club house on suspicion that gambling was going on therein, by citing §315 of the city charter which empowered the police "to carefully inspect and observe . . . all licensed places and gambling houses . . . and to repress or restrain all unlawful and disorderly conduct or practices therein." The court held that this did not confer a right to enter by force without a warrant. The right of inspection conferred must be exercised peaceably and will not justify a breaking in of doors upon mere suspicion. In this respect §318 of the charter purporting to empower the police to enter without a warrant upon the written report of two householders that there is good ground for believing it to be a gaming house is contrary to the Bill of Rights and void. *Phelps* v. *McAdoo* (1905) 94 N. Y. Supp. 265. An officer cannot at his pleasure enter and inspect a private house even though it be under suspicion as a disorderly house, *People* v. *Glennon* (1905) 175 N. Y. 45, and in the case of licensed places the right to forcibly enter is limited to cases of misdemeanors committed in his presence and felonies.